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Attorneys for Claimant (Claim Nos. 1009, 9681)  
PARAMOUNT HOME ENTERTAINMENT INC.

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)**

In re  
  
CIRCUIT CITY STORES, INC., *et al.*,  
  
Debtors.

Case No.: 08-35653-KRH  
(Jointly Administered)  
  
Chapter 11

**APPELLANT PARAMOUNT HOME ENTERTAINMENT INC.'S MOTION FOR  
LEAVE TO INCLUDE ARGUMENTS OF COUNSEL IN RECORD ON APPEAL  
AND MEMORANDUM OF LAW IN SUPPORT THEREOF**

Paramount Home Entertainment Inc. ("Paramount"), by and through its undersigned counsel and pursuant to Local Bankruptcy Rule 8006-1, hereby requests leave of the Court to include arguments of counsel in the record on appeal in connection with its *Notice of Appeal* filed on March 18, 2010 [Docket No. 6900] and respectfully states as follows:

**I.**  
**PROCEDURAL BACKGROUND OF THIS APPEAL**

On November 10, 2008 (the “Petition Date”), the Debtors filed voluntary petitions under chapter 11 of title 11, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”).

On November 13, 2008, on motion of the Debtors, the Court entered the *Order Under Bankruptcy Code Sections 105(a), 362, 503(b), 507(a), 546(c), and 546(h) (I) Granting Administrative Expense Status to Obligations from Postpetition Delivery of Goods; (II) Authorizing Payment of Expenses in the Ordinary Course of Business; (III) Authorizing Debtors to Return Goods; and (IV) Establishing Procedures for Reclamation Demands, entered November 13, 2008* [Docket No. 133], as made final on December 5, 2008 [Docket No. 897] (the “Reclamation Procedures Order”) establishing, among other things, procedures for the filing of a valid reclamation demand and procedures for the Debtors’ handling of such demands.

Paramount filed the *Demand for Reclamation of Goods by Paramount Home Entertainment* (the “Reclamation Demand”) on November 12, 2008 in accordance with the Reclamation Procedures Order and demanded the return of the products delivered to and accepted by the Debtors while insolvent in the ordinary course of business within the 45-day period preceding the Petition Date, which products had a total value of \$11,600,840.04.

On December 10, 2008, the Court entered the *Order Pursuant to Bankruptcy Code Sections 105 and 502 and Bankruptcy Rules 2002, 3003(c)(3), and 9007 (I) Setting General Bar Date and Procedures for Filing Proofs of Claim; and (II) Approving Form and Manner of Notice Thereof* [Docket No. 890] and, on December 12, 2008, the Debtors filed the *Notice of Deadline for Filing Proofs of Claim* [Docket No. 966].

Paramount timely filed its proof of claim, Claim No. 9681, on January 30, 2009. In the proof of claim, Paramount asserted a right to payment in the amount of \$16,497,463.67, which amount is inclusive of the value of the goods that were also the subject of the Reclamation Demand.

On June 22, 2009, the Debtors filed the *Debtors' Nineteenth Omnibus Objection to Claims (Reclassification of Certain Misclassified Claims to General Unsecured, Non-Priority Claims)* [Docket No. 3703] (the "Objection"), in which the Debtors sought to reclassify the amount for which Paramount asserted the right to priority in accordance with its right of reclamation as a general unsecured, non-priority claim.

Paramount filed the *Response of Paramount Home Entertainment Inc. to Debtors' Nineteenth Omnibus Objection to Claims (Reclassification of Certain Misclassified Claims to Unsecured, Non-Priority Claims)* [Docket No. 4154] on July 16, 2009, in which it opposed the reclassification sought in the Objection and clarified its claim as consisting of the following three components:

1. A section 503(b)(9) claim, Claim No. 1009, in the amount of \$3,133,634.57.
2. A reclamation claim, which may be denominated as an *in rem* demand for the proceeds of the goods subject to reclamation up to \$11,600,840.04 (inclusive of the amount entitled to priority pursuant to section 503(b)(9)).
3. A general prepetition claim, Claim No. 9681, for \$16,497,463.67 less amounts which are allowed in connection with the reclamation claim and the section 503(b)(9) claim.

On December 18, 2009, after months of continuing hearing on the Objection, the Debtors filed the *Debtors' Motion for Summary Judgment with Respect to Certain Claims Subject to (I) The Debtors' Nineteenth Omnibus Objection to Claims (Reclassification of Certain Misclassified Claims to General Unsecured, Non-Priority Claims) and (II) the Debtors' Thirty-Third Omnibus Objection to Claims (Modification and/or Reclassification of Certain Claims)* [Docket No. 6135] and memorandum of law in support thereof [Docket No. 6136] (together, the "Summary Judgment Motion"), in which the Debtors sought an order granting summary judgment on the issue of reclamation rights that would reclassify the claim arising from Paramount's Reclamation Demand as a general unsecured, non-priority claim.

Paramount responded on January 8, 2010 in the *Opposition of Paramount Home Entertainment Inc. to Debtors' Motion for Summary Judgment with Respect to Certain Claims Subject to the Debtors' Nineteenth and Thirty-Third Omnibus Objections to Claims* [Docket No. 6237].

The Debtors replied to the responses of Paramount and other reclamation claimants in the *Reply Brief in Support of Motion for Summary Judgment with Respect to Certain Claims Subject to (I) the Debtors' Nineteenth Omnibus Objection to Claims (Reclassification of Certain Misclassified Claims to General Unsecured, Non-Priority Claims) and (II) the Debtors' Thirty-Third Omnibus Objection to Claims (Modification and/or Reclassification of Certain Claims)* [Docket No. 6260], filed on January 13, 2010.

On January 14, 2010, the Court held a hearing on the Summary Judgment Motion and the responses thereto. On the issue of reclamation, the Court heard oral argument primarily from the Debtors' counsel and Paramount's counsel. The Court did not rule on the Summary Judgment Motion at the hearing.

On January 19, 2010, upon the Court's invitation made at the January 14, 2010 hearing, Paramount filed the *Supplemental Post-Argument Brief of Paramount Home Entertainment Inc. in Opposition to Debtors' Motion for Summary Judgment with Respect to Certain Claims Subject to the Debtors' Nineteenth and Thirty-Third Omnibus Objections to Claims* [Docket No. 6324], in which Paramount responded to the Court's questions regarding the applicability and effect of Bankruptcy Code section 363(e) to Paramount's right of reclamation.

The Debtors' responded on January 26, 2010 in the *Debtors' Brief in Response to the Supplemental Post-Argument Brief of Paramount Pictures Home Entertainment, Inc. in Opposition to Debtors' Motion for Summary Judgment with Respect to Certain Claims Subject to the Debtors' Nineteenth and Thirty-Third Omnibus Objections to Claims* [Docket No. 6372].

On March 5, 2010, the Court entered its Memorandum Opinion [Docket No. 6693] and Order [Docket No. 6694] granting the Summary Judgment Motion, thereby ordering the reclassification of the claim arising from Paramount's right of reclamation as a general unsecured, non-priority claim.

Paramount timely filed its *Notice of Appeal* [Docket No. 6900] on March 18, 2010 and, concurrently with this motion, filed *Appellant Paramount Home Entertainment Inc.'s Statement of Issues to be Presented and Designation of Items to be Included in Record on Appeal*.

## **II.** **RELIEF REQUESTED**

Paramount requests leave of Court to include in the record on appeal the arguments of counsel recorded in the transcript of the January 14, 2010 hearing [Docket No. 6312]. The transcript of the January 14, 2010 hearing has also been filed as Exhibit A to the *Debtors' Brief in Response to the Supplemental Post-Argument Brief of Paramount Pictures Home Entertainment, Inc. in Opposition to Debtors' Motion for Summary Judgment with Respect to Certain Claims Subject to the Debtors' Nineteenth and Thirty-Third Omnibus Objections to Claims* [Docket No. 6372], so it is already part of the Record on Appeal.

## **III.** **BASIS FOR RELIEF**

In accordance with Rule 8006 of the Federal Rules of Bankruptcy Procedure, Paramount timely filed its designation of the record on appeal on or before April 1, 2010, which is fourteen (14) days after Paramount filed its *Notice of Appeal*. However, Local Bankruptcy Rule 8006-1(A) provides that, unless otherwise directed by the Court, the record on appeal does not include any arguments of counsel.

Paramount believes that the oral arguments of counsel presented at the January 14, 2010 hearing will assist the review of the issues on appeal, especially in light of the fact that, as a hearing on motion for summary judgment, the Court heard only argument of

legal issues and made its determination on solely legal issues. Therefore, in light of the local rule, Paramount seeks the permission of the Court to include the arguments of counsel presented at the January 14, 2010 hearing in the record on appeal.

**IV.  
CONCLUSION**


Paramount respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit 1**, (1) granting leave to include arguments of counsel presented at the January 14, 2010 hearing in the record on appeal and (2) granting such other and further relief as the Court deems just and proper.

Respectfully submitted,

DATED: March 31, 2010

KLEE, TUCHIN, BOGDANOFF & STERN LLP

By: \_\_\_\_\_

  
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Attorneys for PARAMOUNT HOME  
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**CERTIFICATE OF SERVICE**

I, Korin A. Elliott, hereby certify that a true and correct copy of the foregoing *Appellant Paramount Home Entertainment Inc.'s Motion for Leave to Include Arguments of Counsel in Record on Appeal and Memorandum of Law in Support Thereof* has been served upon the parties listed below via first class mail on this 31st day of March, 2010.

/s/ Korin A. Elliott

Korin A. Elliott (kelliott@ktbslaw.com)

<b><u>The Debtors</u></b> Circuit City Stores, Inc. Attn: Michelle Mosier 4951 Lake Brook Dr., Suite #500 Glen Allen, VA 23060	<b><u>Office of the U.S. Trustee</u></b> Attn: Robert B. Van Arsdale 701 East Broad Street, Suite 4304 Richmond, VA 23219
<b><u>Debtors' Counsel</u></b> SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP Attn: Greg M. Galardi and Ian S. Fredericks One Rodney Square 10th and King Streets, 7th Fl. Wilmington, DE 19801  SKADDEN, ARPS, SLATE, MEAGHER & FLOM, LLP Attn: Chris L. Dickerson 155 N. Wacker Drive Chicago, IL 60606  MCGUIRE WOODS LLP Attn: Douglas M. Foley and Dion W. Hayes 901 E. Cary Street Richmond, VA 23219	<b><u>Counsel for the Creditors' Committee</u></b> PACHULSKI STANG ZIEHL & JONES, LLP Attn: Richard M. Pachulski, Jeffrey N. Pomerantz, and Stanley E. Goldich 10100 Santa Monica Blvd., 11th Fl. Los Angeles, CA 90067  PACHULSKI STANG ZIEHL & JONES, LLP Attn: Robert J. Feinstein 780 Third Avenue, 36th Floor New York, NY 10017  TAVENNER & BERAN, PLC Attn: Lynn L. Tavenner and Paula S. Beran 280 N. Eighth Street, 2nd Fl. Richmond, VA 23219

## **Exhibit 1**



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Attorneys for Claimant (Claim Nos. 1009, 9681)  
PARAMOUNT HOME ENTERTAINMENT INC.

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
(Richmond Division)**

In re

CIRCUIT CITY STORES, INC., *et al.*,

Debtors.

Case No.: 08-35653-KRH  
(Jointly Administered)

Chapter 11

**ORDER GRANTING APPELLANT PARAMOUNT HOME ENTERTAINMENT INC.'S  
MOTION FOR LEAVE TO INCLUDE ARGUMENTS OF COUNSEL  
IN RECORD ON APPEAL**

This cause came before the Court upon the filing of *Appellant Paramount Home Entertainment Inc.'s Motion for Leave to Include Arguments of Counsel in Record on Appeal and Memorandum of Law in Support Thereof* (the "Motion"). The Court having reviewed the Motion, the notice of the Motion, and any opposition to the Motion, it is  
  
HEREBY ORDERED THAT:


1. The Motion is GRANTED, and
2. The record on appeal shall include the arguments of counsel recorded in the transcripts of the January 14, 2010 hearing [Docket No. 6312] as designated by Paramount Home Entertainment, Inc.

Entered:

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Kevin R. Huennekens  
United States Bankruptcy Judge

I ASK FOR THIS:

By:   
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Attorneys for PARAMOUNT HOME ENTERTAINMENT INC.

**CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1**

I HEREBY CERTIFY that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Korin A. Elliott  
Korin A. Elliott

**MAILING LIST OF PARTIES TO RECEIVE NOTICE OF ENTRY OF ORDER**

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